IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.244 of 1995
Date of decision:1.11.2006

The Commissioner of Income tax, Patiala

....Petitioner

versus

M/s. Punjab Wireless System Limited, Mohali.

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg, Advocate, for the revenue.

JUDGMENT:

Following questions have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 19.1.1994 in ITA No.1009/Chandi/1987, in respect of assessment year 1983-84:-

> "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that manufacturing of wireless sets does not fall in Item No.22 (read with its Explanation) of the eleventh Schedule of the Income tax Act, 1961?
>
> 2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing investment allowance under section 32-A of the Income tax Act, 1961 to the assessee company engaged in the manufacturing of wireless sets?"

The assessee claimed investment allowance of Rs.4,63,620/- which was negatived on the ground that the assessee was engaged in

manufacture of wireless sets, which fell under Item 22 of the Eleventh Schedule, which contained a negative list of items on which investment allowance was not admissible under section 32-A of the Income Tax Act, 1961 (for short, 'the Act'). The CIT(A) upheld the said view but the Tribunal accepted the claim of the assessee. It was observed that for the assessment year 1981-82, similar claim of the assessee had been allowed.

Relevant entry is as under:-

> "22. Office machines and apparatus such as typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters.
>
> Explanation – The expression "office machines and apparatus" includes all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work and for data processing (not being computers within the meaning of Section 32AB)."

The issue has been considered by the Madras High Court in **CIT v. Elgi Equipments Limited,** (2000) 242 ITR 460, in the context of Proviso to Section 32A of the Act, which carried the expression "any office appliances or road transport vehicles". It was observed:-

> "The word "appliance" normally denotes a mechanical, electrical or electronic device which is used as an aid in performing any work. An appliance may be used in more than one location. An appliance like air-conditioner which is meant to regulate the temperature within the premises in which it is used, is equally capable of being used within an office, a residence, shop, a factory or buildings used for entertainment, etc. For the purpose of determining the meaning o the expression "office appliance" in Section 32A, second proviso, Clause (b), it is also necessary to have regard to the contents of clause (a) under the same proviso which refers to "any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest house"; clause(a) excludes all machinery and plant installed in any office premises. The exclusion is not confined to office appliances, but would take into account all

machinery and plant which, had they been installed elsewhere would have qualified for the investment allowance.

Office appliance as the term is used in clause (b) of the second proviso must be construed strictly and limited to appliances which are exclusively or permanently used in an office, and not extended to appliances which are capable of being used in an office and are equally capable of being used in a place where the production of articles is carried on or elsewhere.

The investment allowance claimed by the assessee in this case was in respect of intercom, amplifiers and air-conditioners. All these appliances are capable of being installed and used in any place where people work or gather, and desire to communicate. As to whether these appliances would qualify for investment allowance would depend upon the place where and purposes for which they have been installed. In this case, all these appliances are installed in the computer room which has been treated as part of the factory. There is also no dispute that the computers qualify for investment allowance. It has been found by the Tribunal that for the efficient functioning of the computer, the installation of the air-conditioners in the room in which the computers are kept, is necessary, and for effective communication by those who are required to handle the computers, the use of intercom facilities and amplifiers are necessary. These appliances are thus being used as adjuncts to the use of the computers. Having regard to these facts, we do not find it possible to agree with learned counsel for the Revenue when he submits that these appliances are to be regarded as office appliances and, therefore, not eligible for investment allowance.

A view similar to that taken by us with regard to these appliances, has been taken by the High Courts of Himachal Pradesh, Karnataka and Bombay in the case of CIT v. Mohan Meakin Breweries Limited, (1980) 122 ITR 203 (HP), in the case of CIT v. Electronics Research Industries Pvt. Limited, (1991) 192 ITR 20 (Kar) and in the case of CIT v. Tata Chemicals Limited, (1986) 162 ITR 662 (Bom.)"

In view of the above, we are unable to hold that wireless sets will be covered under Entry 22 on the ground that the same were office machines or apparatus.

In view of the above, the questions referred are answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 1, 2006
'gs'

(Rajesh Bindal)
Judge